

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)**

**FILED**

2011 AUG -4 A 11:52

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

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**BOARD OF COUNTY SUPERVISORS OF  
PRINCE WILLIAM COUNTY, VA  
1 County Complex Court – Suite 240  
Prince William, VA 22192**

**Plaintiff,**

**v.**

**U.S. DEPARTMENT OF HOMELAND SECURITY  
601 South 12<sup>th</sup> Street  
Arlington, VA 22202**

**Defendant**

**Civil Action No.**

1:11cv819  
(JCC/JFA)

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF.**

COMES NOW the Plaintiff, **BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA** (“the Board”), which institutes this action against Defendant, **UNITED STATES DEPARTMENT OF HOMELAND SECURITY** (“Homeland Security”) to compel compliance with the Freedom of Information Act, 5 U.S.C. § 552 (hereinafter referred to as “FOIA”). Plaintiff provides the following in support of the Complaint:

**JURISDICTION AND VENUE**

1. The Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).
3. Further, venue is proper in the Alexandria Division of the Eastern District of Virginia pursuant to Local Civil Rule 3(c).

**PARTIES**

4. The Board is the governing body of Prince William County, Virginia, and is a body corporate and politic. It funds, maintains, and oversees the Prince William County Police Department, and it is the primary funding and operational partner in the regional entity which operates the Prince William/Manassas Regional Adult Detention Center.

5. Both the Prince William County Police and the Adult Detention Center have, with the authorization of the Board, entered into written agreements with the Immigration and Customs Enforcement Division of Homeland Security ("ICE") under which ICE directs certain employees of the Police Department in investigating immigration status of offenders and directs certain employees of the Adult Detention Center in issuing ICE detainers against illegal immigrant offenders.

6. The United States Citizenship and Immigration Services Division of Homeland Security (USCIS) is the government agency that oversees lawful immigration to the United States. The mission of USCIS includes strengthening the security and integrity of the immigration system and strengthening the infrastructure supporting the USCIS mission.

7. Homeland Security is an agency of the United States Government and is headquartered at 601 South 12<sup>th</sup> Street, Arlington, Virginia, 22202. Homeland Security has possession, custody and control of records to which the Board seeks access.

#### **STATEMENT OF FACTS**

8. On November 22, 2010, the Board submitted a FOIA request to the Defendant via its web interface application located on the World Wide Web at [www.ice.gov/foia/request-form.htm](http://www.ice.gov/foia/request-form.htm), and also via facsimile to USCIS. See Exhibit A, the language submitted within the web interface text box, and Exhibit B, the facsimile.

9. The request sought access to (a.) Copies of any and all records and reports (or any non-exempt portions thereof) of the US Department of Homeland Security, the US Immigration and Customs Enforcement Division, and/or the US Citizenship and Immigration Services Division regarding those individuals taken into physical custody in Prince William County (as held by the Police Department or the Adult Detention Center) and to which physical custody was then turned over to ICE from January 1, 2008 to present, (b) Copies of any and all alien files (or any non-exempt portions thereof) of the US Department of Homeland Security, the US Immigration and Customs Enforcement Division, and/or the US Citizenship and Immigration Services Division regarding those individuals taken into physical custody in Prince William County (as held by the Police Department or the Adult Detention Center) and to which physical custody was then turned over to ICE from January 1, 2008 to present, (c) Copies of any and all reports (or any non-exempt portions thereof) of the US Department of Homeland Security, the US Immigration and Customs Enforcement Division, and/or the US Citizenship and Immigration Services Division that include data and/or statistics concerning the contacts, disposition, and/or the status regarding those individuals taken into physical custody in Prince William County (as held by the Police Department or the Adult Detention Center) and to which physical custody was then turned over to ICE from January 1, 2008 to present..

10. On November 22, 2010, the Board received an automated electronic confirmation evidencing receipt of the request by Homeland Security/ICE. See Exhibit C.

11. On December 6, 2010, the Board received from Defendant through USCIS, a letter dated November 30, 2010 stating that the request had been received. USCIS determined that the requested records were not under the purview of USCIS, and if any such records exist, they would be maintained by ICE. See Exhibit D.

12. Moreover, the letter dated November 30, 2010 from USCIS also articulated that although alien files are maintained by USCIS, USCIS could not discern from the County's request which files were sought, and even if USCIS could determine which alien files were sought, their release would constitute an unwarranted invasion of personal privacy. The County must presume that the persons whose privacy the USCIS is protecting through its denial of the County's FOIA request are persons illegally present who were detained and turned over to ICE at ICE's direction.

13. On December 6, 2010, the Board received from Defendant through ICE, a letter dated November 22, 2010, stating that the Board's request had been received, had been assigned case number 2011FOIA2245 and that Homeland Security/ICE was processing the request. See Exhibit E.

14. Pursuant to 5 U.S.C. § 552(a)(6)(A), Homeland Security was required to respond within thirty (30) working days of November 22, 2010, or on or before January 6, 2011.

15. On January 25, 2011, not having received a response, the Board submitted a written request for a status update via electronic mail with regard to Homeland Security's failure to provide the response required by FOIA. See Exhibit F.

16. The Board, by counsel, also followed up with a telephone call, at which time, it was informed that Yanil Escobar was responsible to process the FOIA, but that he was on military leave and while he had been out, the FOIA had been assigned to him on December 27, 2010.

17. The Board, by counsel, had contacted ICE several times by telephone since January 25, 2011 regarding response to its request.

18. Mr. Escobar stated repeatedly that responsive documents would be forthcoming. Eventually, it was communicated that Mr. Ryan Law, the Deputy FOIA Officer for ICE, would be providing eventual response.

19. On February 11, 2011 at 3:36 p.m. EST, Ryan Law, provided a response on behalf of Homeland Security/ICE, which included a three-page cover letter and a heavily redacted Excel spreadsheet. See Exhibit G.

20. The cover letter indicated that copies of any and all alien files (or any non-exempt portions thereof) of the US Department of Homeland Security, the US Immigration and Customs Enforcement Division, and/or the US Citizenship and Immigration Services Division regarding those individuals taken into physical custody in Prince William County (as held by the Police Department or the Adult Detention Center) and to which physical custody was then turned over to ICE from January 1, 2008 to present, are maintained by USCIS.

21. Moreover, ICE stated it would forward the request to USCIS for processing, and inconsistent with USCIS's letter dated November 30, 2011, in response to the same request indicating the requested records were not under the purview of USCIS, and if any such records exist, they would be maintained by ICE.

22. Most significantly, ICE's letter dated February 11, 2011, states that some responsive information was redacted document and cites three inapplicable and/or inappropriate exemptions within FOIA in support, in particular FOIA Exemptions 2, 6 and 7(c), in contravention of federal law.

23. FOIA Exemption (2) exempts, "information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manuals of procedures..."

24. FOIA Exemptions 6 and 7(c) exempt from disclosure records that constitute an unwarranted invasion of an individual's personal privacy.

25. The Privacy Act of 1974 as amended, found at 5 U.S.C. § 552 (hereinafter referred to as "The Privacy Act", specifically governs individuals' rights of privacy, as it relates to information maintained in government systems.

26. The Privacy Act very specifically defines the term "individual" for the purpose of determining who enjoys privacy rights with regard to information maintained in government systems.

27 Individual is defined as, "a citizen of the United States or an alien lawfully admitted for permanent residence." See Exhibit H.

28. By federal statute, only citizens of the United States or aliens lawfully admitted for permanent residence enjoy privacy rights with regard to information maintained in government systems.

29. To the extent, Homeland Security/ICE has redacted and withheld records regarding an illegal alien, or any other individual not enjoying rights under The Privacy Act citing FOIA Exemptions 6 and 7(c) and asserting that disclosure of such records may constitute an unwarranted invasion of an individual's personal privacy, Homeland Security has impermissibly exceeded its authority and has acted in contravention of the law by which it is bound.

30. Homeland Security/ICE in disregarding Congress' explicit instructions, FOIA and The Privacy Act, regarding government transparency violates the law, evades accountability, and undermines the public trust, thus disarming the ability to maintain and informed citizenry, which is vital to the healthy functioning of a democratic society.

31. Those instances in which Homeland Security/ICE cites Exemption 2, in support of redaction, are violations of the FOIA because Exemption 2 does not exempt an illegal alien's alien number as "information applicable to internal administrative and personnel matters, such as operating rules, guidelines, and manuals of procedures."

32. Finally, a second letter from USCIS has been received dated June 10, 2011, which indicates that USCIS was further reviewing the request; however, which indicated that without consent of the illegal aliens that are the subject of the records sought, along with their respective alien numbers, date of birth and country of birth, would cause the request to be administratively closed. See Exhibit I.

33. Department of Homeland Security takes the position that 6 C.F.R. Section 5.21(d) authorizes the internal policy of the Department of Homeland Security, titled Privacy Policy Guidance Memorandum, Memorandum Number: 2007-1, as amended on January 7, 2009, See Exhibits J and K, respectively, which provide that the consent of an illegal alien is required in order to obtain the information the Board seeks. The internal policy of the Department of Homeland Security is void because the Department of Homeland Security lacks legal authority to exceed the provisions established by Congress in The Privacy Act. 6 C.F.R. Section 5.21(d) cannot authorize the Department of Homeland Security Policy, as it has been adopted in direct conflict with federal law. It is, therefore, void.

34. The Privacy Act very specifically defines the term "individual" for the purpose of determining who enjoys privacy rights with regard to information maintained in government systems, as "a citizen of the United States or an alien lawfully admitted for permanent residence."

35. To the extent Homeland Security/USCIS has redacted information regarding an illegal alien, an individual not enjoying rights under The Privacy Act, Homeland Security has impermissibly exceeded its authority and has acted in contravention of the law by which it is bound.

36. Homeland Security/USCIS - in disregarding Congress' explicit instructions, FOIA and The Privacy Act, regarding government transparency – the agency violates the law, evades accountability, and undermines the public trust, thus disarming the ability to maintain an informed citizenry, which is vital to the healthy functioning of a democratic society.

**COUNT I: Violation of FOIA, 5 U.S.C. § 552.**

37. Paragraphs 1 – 36 are incorporated herein.

38. Homeland Security is unlawfully withholding records requested by the Board pursuant to 5 U.S.C. Section 552.

39. Injunctive relief is the prescribed legal remedy for this unlawful conduct.

40. The Board is being irreparably harmed due to Homeland Security's unlawful withholding of the requested records, and the Board will continue to be irreparably harmed unless Homeland Security is compelled to conform its conduct to the requirements of the law.

**WHEREFORE**, the Board respectfully requests this Honorable Court (1) enjoin Homeland Security from unlawfully withholding any non-exempt agency records responsive to the Board's November 22, 2010, FOIA request; (2) order Homeland Security to produce, by a date certain, any and all non-exempt records responsive to the Board's November 22, 2010, FOIA request and a *Vaughn* index of any responsive records withheld under claim of exemption; (3) grant the Board an award of attorney's fees and other litigation costs reasonably incurred in



this action, pursuant to 5 U.S.C. § 552(a)(4)(E), and (4) grant any such other relief as the Court deems just and proper to attain the ends of justice.

Dated: August 4, 2011

Respectfully submitted,

**THE BOARD OF COUNTY SUPERVISORS  
OF PRINCE WILLIAM COUNTY, VIRGINIA**



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